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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,867	06/29/2006	Michael Schneider	0262-061920	7715
28289 7590 06/21/2010 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1781	PAPER NUMBER
			MAIL DATE 06/21/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,867	<b>Applicant(s)</b> SCHNEIDER ET AL.	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21, 23, 24, 26, 27 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☒ Claim(s) 21, 23, 24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

The specification at page 2, lines 11-12 contains references to the claims. It is requested that applicant amend the specification to conform to standard US practice by putting the substance of original claims 1 and 13 into the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Rombauer for reasons of record used in rejecting claims 21, 23, 24 and 29 and further in view of Potter.

Akimoto discloses fowl eggs made to contain highly unsaturated fatty acids. The source of the unsaturated fat in the eggs of Akimoto is the feed, which contains oil from microorganisms. The tables in Akimoto show that the test eggs contain the level of unsaturated fatty acids required in the product. The phospholipids and the non-fat components in the egg would

be considered to be egg ingredients. The use of the egg in foods is disclosed in the last three paragraphs before the examples. The claims appear to differ from Akimoto in the recitation that the fat in the egg is solid. Rombauer reminds use that eggs are commonly prepared by hard cooking them. A Hard boiled egg yolk would be expected to form a solid fat containing product. Potter is relied upon to show that egg yolk contains non-fat ingredients in Table 48. It would have been obvious at the time of applicants' invention to hard cook the egg of Akimoto to form a solid fat whole egg yolk product. It is appreciated that the carbohydrate content is not mentioned in the references but claims 26-27 do not provide a lower limit for carbohydrate content. One would expect the carbohydrate content of the Akimoto to fall within the range of the claims for this reason.

Applicant argues that Akimoto does not prepare his product in the same way as applicant. This has been considered but is not persuasive. The claims are not directed to a process but are directed to a product. There are no process limitations in the rejected claims.

Applicant argues that hard boiled eggs do not have the solid fat content of the claims. This has been considered but is not persuasive. Egg yolks are disclosed by Potter in Table 48 to have the fat content of the

claims. One of ordinary skill in the art would expect hard boiled egg yolks to be solid and to have the fat content of the claims.

Applicant argues that the fat in Akimoto does not originate from the required sources that are set forth in the claims. This has been considered but is not persuasive. The eggs in Akimoto are from a chicken, which would be a source of animal fat. The chickens are feed alternative sources of oil from microorganisms, which are products from fermentation and are single cell organisms. The fatty acids from the feed oil incorporated into the eggs by the chicken, as disclosed by Akimoto.

Applicant argues that Akimoto does not provide the percentage of long chain polyunsaturated fatty acids that are required in the claims. This is disagreed with. Table 5 shows the fat in the yolk and after 10 days of feeding chickens the oil for the test group. The egg yolk was shown to have more than 10% long chain polyunsaturated fatty acids (arachidonic plus docosahexaenoic).

The way the yolks are treated in Akimoto for analysis is not seen be at issue in the product, in Akimoto in view of Rombauer and further in view of Potter, is a hard boiled egg yolk.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Rombauer and further in view of Potter as applied to claims 21, 24, 26 and 27 above, and further in view of Remacle (2004/002292) if necessary.

Applicants' arguments are directed to Akimoto and so no arguments need to be addressed.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto in view of Rombauer and further in view of Potter as applied to claims 21, 24, 26 and 27 above, and further in view of Hagiwara (6,358,554).

The claims appear to differ from Akimoto in the recitation that the fat in the egg yolk is solid powder. Hagiwara teaches preparing egg powder in the examples by the use of spray drying. It would have been obvious to one of ordinary skill in the art to spray dry the eggs of Akimoto to preserve them.

No arguments need to be addressed for this rejection.

Claim 30 is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**

**FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781



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